

### **REMARKS/ARGUMENTS**

With this response, claims 1, 3-6, and 8 -76 are pending. Claims 12-32, 35, 36 and 41-76 are currently withdrawn as directed to non-elected subject matter.

#### **Claim Amendments**

Claim 6 is amended for clarity by deleting the second reference to SEQ ID NO:14.

Withdrawn claims 17 and 22 are amended for clarity and to correct a grammatical error.

The amendments do not constitute the addition of new matter. Entry of the claim amendment is respectfully requested.

#### **Withdrawn Rejections**

Applicants acknowledge the withdrawal of all previous rejections except for the maintained rejections under 35 USC § 102 of *Wright and Conticello*.

#### **Maintained Claim Rejections – 35 USC § 102**

The Office had previously objected to the Declaration submitted under 37 CFR 1.132 to remove the Wright and Conticello reference as not “by another” as insufficient (see Office Action of May 8, 2009), inquiring as to “the specific contributions that each of the Inventors/Author contribute to the rejected claims.” Although Applicants continue to traverse the Office’s characterization of the Declarations and the standard applied to those Declarations, in the interest of facilitating prosecution Applicants submit herewith a revised Declaration under 37 CFR 1.132 that clarifies the cited reference is not by another.

Applicants believe Wright and Conticello is not properly available as prior art to the present application because it is not “by others” as required by 35 U.S.C. § 102(a). As clarified in *In re Katz*, 215 USPQ 14, 17 (CCPA 1982), “one’s own work is not prior art

under § 102(a) even though it has been disclosed to the public in a manner or form which otherwise would fall under § 102(a).” Furthermore, *Ex parte Maner*, 133 USPQ 404, 405 (BPAI 1961) clarified that a publication by less than all the inventors published less than one year before the application filing date may be removed as a reference by the filing of an affidavit by the authors.

Applicants submit herewith an executed Declaration which establishes the cited Wright and Conticello reference represent Applicants’ own work, and it should not be cited against this application in view of the publication is less than one year prior to the filing date of the patent applications from which this application claims priority.

Inventors Elizabeth R. Wright and Vincent P. Conticello are coauthors of the Wright and Conticello reference. Attached is a Declaration under 37 C.F.R. 1.132 by Drs. Wright and Conticello establishing their contribution to the claimed invention and explicitly establishes they are inventors of the subject matter recited in claim 1 (e.g., the recited copolymer sequences) based on their development and work on the recited sequences. In particular, Applicants confirm that Wright and Conticello are not contributors to only withdrawn claims (as exemplified by the Office in the Office Action dated May 8, 2009, stating: “e.g., if Wright and Conticello contributed only to, for example, pending but withdrawn claim 25, then the reference would still be applicable towards the rejection of claim 1.” p.8). Applicants confirm, as further evidenced by the accompanying Declarations, that Wright and Conticello contributed to and are inventors of pending claim 1.

In view of the above arguments and attached evidence in the form of Declarations, the Wright and Conticello reference is not a proper 35 U.S.C. § 102(a) reference. Therefore, reconsideration and withdrawal of the rejection is respectfully requested.

### **CONCLUSION AND REQUEST FOR REJOINDER**

In view of the foregoing, it is submitted all pending claims are believed allowable and in condition for allowance. Passage to issuance is, therefore, respectfully requested. Applicants request the withdrawn claims be rejoined upon claim 1 being found allowable. In particular, various withdrawn method claims include the limitations of claim 1 (e.g., claims 21-25, 27, and 68-76) and rejoinder of method claims depending from a patentable product claim is in accordance with Office procedure (see MPEP § 821.04). Similarly, Applicants request the other withdrawn composition claims be reconsidered for rejoinder as they conform to the limitations of claim 1, including, *inter alia*, claims directed to a film (claims 12-17, 28-30), a gel (claim 18), a fiber or fiber network (claims 19, 20, 31, 32), a device (claims 35, 36, 41-43) of the protein copolymer of claim 1.

### **REQUEST FOR EXTENSION OF TIME**

It is believed that a fee for a three-month extension of time is due. The undersigned hereby authorizes that such amount be deducted from Deposit Account No. 07-1969 if the fee is not otherwise paid by EFS-Web. In addition, to ensure the Office considers the enclosed, a Request for Continued Examination and associated fee is submitted herewith. If this amount is incorrect or as necessary please credit any overpayment or deduct the appropriate fee, including any fee for any extensions of time required, from Deposit Account No. 07-1969.

Respectfully submitted,

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